D.B. CIVIL SPECIAL APPEAL NO.639/2007
(Jai Narain Vyas University, Jodhpur Vs. Anil Kumar Arora)

DATE OF ORDER : 07.08.2007

HON'BLE MR. JUSTICE P.B. MAJMUDAR
HON'BLE MR. JUSTICE DEO NARAYAN THANVI

Mr. Yaswant Mehta for the appellant.
Mr. M.S.Singhvi for the respondent.

BY THE COURT : (PER MAJMUDAR,J.)

Heard learned counsel for the parties.

Admit. Since learned counsel Mr. M.S.Singhvi had appeared before the learned Single Judge, we request him to appear in the matter and he has readily accepted the same. With the consent of learned counsel for the parties, we take up the matter for final disposal.

By filing this special appeal, the appellant has challenged the order of the learned Single Judge dated 18.4.2007, by which, the learned Single Judge while terminating the proceedings of the writ petition, permitted the writ petitioner to withdraw the cost of Rs.10,000/-. The appellant–University being aggrieved by the said order has preferred this special appeal. The

respondent herein had preferred the said writ petition being S.B.Civil Writ Petition No.470/2007 against the University for not awarding the PHED Degree, even though, the thesis was submitted long back. In the aforesaid matter on 22.3.2007, the learned Single Judge passed the following order:

> "Mr. Mehta prays for one more opportunity to file reply. Time has already been granted in the past on 7.3.2007 to the extent that was prayed. However, in the interest of justice, one more opportunity is granted to file reply within three weeks subject to payment of cost of Rs.10,000/- to be deposited with the State Legal Service Authority, Jodhpur. It is made clear that if the cost is not paid within the aforesaid period and/or reply is not filed, the right of hearing of the respondent would stand forfeited."

The aforesaid order clearly indicates that if the cost as ordered has not paid within the stipulated time and/or reply is not filed, the right of hearing of the respondent (appellant herein) was ordered to be forfeited. Thereafter, it seems that the University has not paid the said cost within the stipulated time. In the meanwhile, the University had already granted relief in favour of the writ petitioner. The learned Single Judge dismissed the writ petition on the ground that the same has become infructuous. However, the learned Single Judge further observed that the cost imposed by the earlier order dated 22.3.2007 may be recovered from the University (appellant

herein) in accordance with law.

Learned counsel Mr. Yaswant Mehta submitted that when the appellant had not filed any reply nor had requested the court that he may be heard on merits, there was no question of asking the appellant to deposit the cost. He further submitted that the University had not deposited the cost as the University decided not to contest the proceedings and, therefore, reply was not filed.

In our view, the order of the learned Single Judge is required to be read in the manner that in case the University files reply or want to contest the matter, then only the amount of cost was required to be deposited. The learned Single Judge has made the aforesaid aspect very clear in the order dated 22.3.2007 that if the cost is not paid, the right of hearing of the respondent would stand forfeited. The learned Single Judge has not said in the order dated 18.4.2007 that the appellant herein is bound to deposit Rs.10,000/-. It merely provided that the amount can be recovered by the original writ petitioner in accordance with law. In any case, when the University has not filed reply nor it tried to argue the case on merits before the learned Single Judge, there was no question of compliance with the order of cost imposed by the learned Single Judge by order

dated 22.3.2007.

In view of the aforesaid aspect of the matter, there was no question on the part of the University to deposit the amount as the amount was required to be deposited in two eventualities, firstly, if the reply was filed or secondly, if the University wanted to contest the matter before the learned Single Judge. Since the University has not addressed the Court on merits nor filed any reply, it was not obligatory on the part of the University to deposit the cost. It is not a case where while disposing the writ petition, the Court has imposed any cost of litigation against the present appellant. In view of the order dated 22.3.2007, the cost was to be deposited in the eventuality mentioned in the said order.

In these circumstances, it is held that since the appellant has not filed reply nor has contested the matter, the amount cannot be recovered from the appellant by the respondent. Accordingly, the Special Appeal is allowed to the aforesaid extent and in view of the facts and circumstances of the case as indicated in this order, the cost imposed is set aside.

(DEO NARAYAN THANVI), J. **(P.B.MAJMUDAR), J.**

ms rathore